

Lurie

“The Case of the Founding of Monmouth County”

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This paper originated as a presentation for New Jersey Archives Day held at Monmouth County Archives, when the county celebrated its 325th anniversary. The first four clearly defined counties in New Jersey were established in 1683, and they set the pattern for the future role counties played in the state. Much, though certainly not all, of the controversy leading up to their creation came from the Monmouth towns whose story is emphasized here.

I. Introduction

In 2008 Monmouth County, New Jersey, celebrated its 325th anniversary. Such celebrations are a common occurrence in a time when government agencies and historical organizations focus on special years that can serve to direct attention to the past. This truth leaves the question of why attention should be focused on this particular event, and whether it had any particular significance.

In fact the seventeenth century origins of New Jersey are exceedingly complex, and the year 1683 a significant point of change, when a new set of proprietors (claiming title to one half of New Jersey's land and government) took over. Starting with that information several questions come to mind in the “Case of the Founding of Monmouth County” that can be examined to evaluate the reason for and importance of this event. First, why create counties at all? Why in 1683? What about the context – was it connected to that complicated early colonial history? Who wanted to do this – the settlers or the proprietors? And in the end did it matter? The answers for a story that actually begins more than 325 years ago, are surprisingly clear, though qualified with such words as “probably” “maybe” “perhaps” and “possibly.”

II. Why Counties

First, why counties? The founders were primarily Englishmen, and brought with them the tradition that “shires” or counties were to be the local unit of government, and a center for the court system. The first ones had been created in England by the ninth century. At an early point when settling in the New World, English colonists turned to this traditional institution.² The colonists in Virginia first created counties in 1634 as the basis for representation in the House of Burgesses. Massachusetts followed suit in 1636 establishing judicial districts, and then four counties in 1643. Yet there were important differences. Settlement in Virginia was scattered in plantations primarily located along rivers or spread across an ever moving backcountry. The county seat became important for court days, elections, business transactions, and even socializing. In Massachusetts

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² On the creation of counties see Henry. S. Gilbertson, *The County: The ‘Dark Continent’ of American Politics* (New York: National Short Ballot Organization, 1917); and for New Jersey see: Harris I. Effross, *Juries, Jails and Justice: The Sheriff's Office in New Jersey since the Seventeenth Century* (Metuchen: Upland Press, 1998).

the Puritan settlers laid out towns, with their churches at the center, and held town meetings for local decisions. Town government was primary; counties were created, but they were secondary. New Jersey was settled by English Puritans, but also the Baptists and Quaker dissenters from Puritanism who left New England communities for Long Island and New Jersey. In the end New Jersey combined, like the other mid-Atlantic colonies of New York and Pennsylvania, town and county government, mixing rather than emphasizing one or the other as occurred further north and south. Both came to be seen as important, and to serve important functions. The most important function of the county, in terms of its establishment in colonial New Jersey, was to serve as a center for courts.

III. Context

Second, why create counties in New Jersey in 1683? The context matters.³

If you lived in this part of New Jersey in 1683 and had been around for twenty years then (a) you had seen one dramatic change after another; (b) your greatest concern was probably the validity of your land titles; (c) to protect those titles, who constituted the courts and how was vital.

The earliest European settlers of Monmouth County came exploring the region in 1663, looking for land to buy from the Indians. They were chased away by the Dutch who claimed the whole region as part of New Netherland.⁴ Then in 1664 came the English in several armed ships, and the Dutch in Manhattan surrendered. King Charles II had granted a vast region from what is now Delaware to Martha's Vineyard to his brother James, Duke of York.⁵ The Duke sent Richard Nicolls as his governor, and to encourage

³ For the seventeenth century settlement of New Jersey see especially the work of John Pomfret: *The Province of East Jersey, 1609-1702: The Rebellious Colony* (Princeton: Princeton University Press, 1962) (hereafter Pomfret, ENJ); *The Province of West New Jersey, 1609-1702: A History of the Origins of An American Colony* (Princeton: Princeton University Press, 1956); *The New Jersey Proprietors and Their Lands, 1634- 1776* (Princeton: Van Nostrand, 1964); *Colonial New Jersey: A History* (New York: Scribner, 1973). Also Wesley Frank Craven, *New Jersey and the English Colonization of North America* (Princeton: Van Nostrand, 1964); John A. Latschar, *East New Jersey, 1665-1682: Perils of Proprietary Government* (Ph.D. thesis, Rutgers University 1978); Richard P. McCormick, *From Colony to State, 1609-1789* (Newark: New Jersey Historical Society, 1981) 14-37; Edwin Tanner, *The Province of New Jersey, 1664-1738* (New York: Columbia University Studies, 1908) 58-90; William Whitehead, *East Jersey Under Proprietary Governments* (Newark: 1846); Claribel Young, *Imperial, Proprietary and Freeholder Objectives In the English Settlement of New Jersey, 1664-1682: A Study in Cross Purposes and the Resulting Development of Pluralist Government* (Ph.D. thesis, Rutgers University, 1989).

⁴ Pomfret, ENJ. 34-35; Franklin Ellis, *History of Monmouth County New Jersey* (Philadelphia: R. T. Peck Co., 1885), 58-61.

⁵ Copies of New Jersey's founding documents are held by the New Jersey State Archives, including those in the recently obtained Robert Barclay Record Book. Printed copies are in Aaron Leaming and Jacob Spicer, eds., *The Grants, Concessions, and Original Constitutions of the Province of New-Jersey* (Philadelphia, 1756) (hereafter L&S); and in William A. Whitehead, ed., *Documents Related to the Colonial History of the State of New Jersey*, v. 1 1631-1687 (Newark, 1880), (hereafter NJA); Constitutions are also found in Julian P. Boyd ed., *Fundamental Laws and Constitutions of New Jersey, 1664-1964* (Princeton, 1964), the source cited here for those documents. Many of the documents can also

quick English settlement of the area, Nicolls gave out several grants of land including the Navesink or Monmouth patent.

But while Nicolls was on the high seas, the Duke turned around and granted part of his new territory (that Nicolls thought the most valuable part) to Sir George Carteret and John Lord Berkeley, two Englishmen who had supported the monarchy through the mid seventeenth century turmoil of Civil War and exile.⁶ The monarchy, restored in 1660, was paying off its political debts and New Jersey was the coin of the realm used for payment. The new proprietors refused to recognize the legality of the Nicolls patents, insisting on their own right to both land and government, and the need for the settlers to take out new grants. They sent along Philip Carteret, a relative of Sir George, to be governor. He arrived in August 1665. Carteret called his first assembly in 1668, refused to recognize a separate assembly held by the Monmouth towns, and tried to collect quit rents, including from those who had settled in the Nicolls patents. By 1671 Carteret was at loggerheads with many of the settlers.

Then in 1671/2 James Carteret arrived, a son of Sir George, on his way to Carolina (of which his father and Berkeley were also proprietors). James conspired with some of the colonists to take over the government, called the Revolution of 1672.⁷ Philip Carteret departed for England to get the backing of Sir George, and also of the king. James Carteret did not stay around long, moving on to the Carolinas.

In July 1673 the Dutch returned, equipped with twenty three armed ships and 1600 soldiers. The English looked, and surrendered. Many of the English settlers, in New York and New Jersey, promised their lands would be protected, took oaths of loyalty to the Dutch.⁸ But Dutch authority ended in November 1674.

By the terms of the peace treaty signed between Holland and England in 1674 British title to the region was restored. Charles II gave a re-grant of New York (with its generous boundaries) to his brother. Lord Berkeley had sold his half of New Jersey to two Quakers, John Fenwick and George Byllynge, a fact the Duke initially ignored, but later recognized.⁹ In practice it meant there were now two Jerseys, though our interest is in the eastern section. Carteret was given a “release” or new grant.¹⁰ Philip Carteret returned and took up the reigns of government. He brought a *Declaration of Intent*, dated 1672, from the proprietors, intended to enforce their title and collect quit rents, along with a statement from the King that the settlers should recognize the proprietors’ government

be found on the State Archive’s website, and the Avalon site of Yale University Law School. For the Grant to the Duke of York see: L&S, 3-8; NJA v.1, 3-8.

⁶ Grant from Duke to Berkeley and Carteret: L&S, 8-11; NJA v.1, 8-14.

⁷ Pomfret, ENJ, 56-81.

⁸ For the Dutch interlude see: Pomfret, ENJ, 73-81, 107-108; *Samuel Steele Smith, Lewis Morris: Anglo American Statesman, ca. 1631-1691* (Atlantic Highlands: Humanities Press, 1983) 59-65; Jack Harpster, *John Ogden, The Pilgrim (1609-1682): A Man of More than Ordinary Mark* (Madison, N.J.: Fairleigh Dickinson University Press, 2006) 167-170.

⁹ For the early history of West Jersey see Pomfret, *West New Jersey*, op.cit.; for the resulting agreement to divide the colony see Quintipartite Deed in L&S, 61-72; NJA v.1 205-219.

¹⁰ L&S, 46-48; NJA v.1, 161-167.

and title.¹¹ In part because of his efforts to enforce the rules, soon the governor was again at logger heads with the settlers.

Philip Carteret's right to govern in New Jersey, the basis for proprietary government, was challenged by Sir Edmund Andros the governor of New York, who at one point in 1680 even had Carteret arrested, hauled off to New York and tried for illegally trying to govern. A local jury acquitted him, and later that year a British judge ruled that the Jerseys were entitled to their own governments.¹² Carteret and his council charged that Andros had "endeavor[ed] to unhinge the Govrn^t by putting force upon the same, all which caused great disorder and Confusion in the Province..."¹³ Andros backed down.¹⁴

Behind this story was the fact that on January 14, 1680 Sir George Carteret had died. Andros apparently knew and was trying to take advantage of the situation by discounting proprietary government in New Jersey, and adding the territory to New York. He failed. Title passed to his widow Dame Elizabeth Carteret, who decided to sell East Jersey.

Finding a buyer was not that easy as the province had yet to return a profit; little in rent money had been collected (not surprising given the opposition of the colonists). What was now called East Jersey was sold at auction – the purchasers were a group of twelve Englishmen, mostly Quakers, who soon divided their shares in half. It was 1682 and the "Twenty four" proprietors now owned East Jersey.¹⁵ The Quakers were also involved in West Jersey and Pennsylvania through William Penn who had recently received a grant of Pennsylvania (in fact Penn was involved in all three provinces). Quakers were the radicals of the seventeenth century, persecuted in Britain for their religious beliefs and non-conformity, they sought a refuge in the New World. They wanted to create colonies where they could control the government, and then enact laws, to protect their religious freedom. In East Jersey they appointed Robert Barclay, a prominent Scottish Quaker, as governor. He stayed in Britain promoting settlement, especially among Scotsmen, a number of whom moved to the colony. Thomas Rudyard was sent as deputy governor.

At this point readers' heads are probably spinning, but that is actually the purpose of this litany. If one had moved to Monmouth County in 1663/4 and was still there in 1683, in

¹¹ Declaration of Intent, Boyd, 67-70; Letter from the King, NJA v.1, 153-154.

¹² L&S, 673-685; NJA v.1, 292-306, 314-316, 323-332, 337-347; Maxine N. Lurie, "New Jersey, Unique Proprietary," *Pennsylvania Magazine of History and Biography* 111 (1987)76-97; Pomfret, ENJ, 102-129; S.S. Smith, op.cit., 73-78; Stephen Saunders Webb, "The Trials of Sir Edmund Andros," in James Kirby Martin ed., *The Human Dimensions of Nation Making: Essays on Colonial and Revolutionary America* (Madison, Wisconsin: State Historical Society, 1976), 30-34. Andros also arrested John Fenwick when he tried to rule as the governor of West Jersey.

¹³ Richard P. McCormick, "The Revolution of 1681 in East Jersey: A Document," *New Jersey Historical Society Proceedings* 7 (1953) 113.

¹⁴ With the Restoration in 1660 Charles II, and then his brother James II, increased the number of proprietary governments and then tried to centralize the empire. Andros' actions reflect this second effort. Behind it were questions about whether the Duke of York could convey the power to govern to Berkeley and Carteret, and then their successors, or if this could only be done in a direct grant from the King. British authorities from 1664 to 1702 alternately appear to confirm the New Jersey proprietors' right to govern and then challenged that power. See Lurie, "New Jersey Unique," op.cit.

¹⁵ Duke's Lease and Release to the Twenty-four Proprietors: L&S, 141-150; NJA v.1, 366-369, 383-394.

twenty years he would have witnessed nine changes in the government or ownership of the region. Through this period most of those who had Nicolls grants tenaciously held to their claims, and argued that they did not have to pay the proprietors' quit rents, nor perhaps recognize their government. They even claimed the right to their own local assembly. At times they apparently preferred to think of themselves as still part of New York.¹⁶ It is very unlikely in the context of the Duke's rule of colonial New York, that their assumptions were correct. He demanded rents and did not agree to an assembly for that colony.¹⁷ But they persisted.

That said, in 1683 the reality was a new set of proprietors, a new governor, and even a new proposed "constitution." In this context, on March 7, 1683 the first four counties in New Jersey, Bergen, Essex, Middlesex, and Monmouth were created.¹⁸

IV. Who?

There is no question about when Monmouth County was established. That is in the colonial records. The more important question is who was behind its creation? Proprietors or colonists? Given the conflict, it seems logical to ask.

The series of proprietors sent a string of documents to the colony presenting their plans for land settlement, and government.¹⁹ All were generous in granting religious toleration and freedom, without which they would have had an even harder time of getting settlers. The land terms were also meant as an attraction – come to settle and you would receive what was called a headright, 150 acres of land; bring others with you and you got even more. Land was also reserved, in generous amounts, for the proprietors themselves. An assembly was to be established, and the colonists could elect and send representatives to it. Governor and council were appointed by the proprietors. These are the common threads, the specifics differ, and the question of how much authority the assembly might actually have remained open.

Not until the last in a series of proprietary constitutional documents was the word county used, and that document was rejected by legislature as an impossibly impractical plan. It

¹⁶ On Monmouth see especially: Ellis, 71-79, 85-96; Pomfret, ENJ, 42-47, 56-60, 64; Young, 108-269; Langdon E. Morris, *History of the Monmouth Patent* (Freehold, N.J.: 1930); Joel Parker, *Monmouth County from Settlement to Surrender of the Government of New Jersey to the Crown in 1702* (Newark: Daily Advertiser, 1872); Peter O. Wacker, *Land and People: A Cultural Geography of Pre-industrial New Jersey: Origins and Settlement Patterns* (New Brunswick: Rutgers University Press, 1975) 250-253; Robert Van Waes, *History of Monmouth County* (Monmouth County: Freeholders, 1968).

¹⁷ The Duke's governors ruled New York without an assembly. Faced with a tax revolt in the colony he agreed to one, only to withdraw the possibility on becoming king in 1685. See: Robert C. Ritchie, *The Duke's Province: A Study of New York Politics and Society, 1664-1691* (Chapel Hill: University of North Carolina Press, 1977).

¹⁸ L&S, 229; Frederick W. Ricord and William Nelson, eds., *Documents Relating to the Colonial History of the State of New Jersey*, v.13 *Journal of the Governor and Council, 1682-1714*, (Trenton: John L. Murphy Publishing Co., 1890) 17-18 (hereafter cited as NJA v.13); John P. Snyder, *The Story of New Jersey's Civil Boundaries, 1606-1969* (Trenton: Bureau of Geology and Topography, 1969) 12, 29, and map 31.

¹⁹ As noted above the best modern source is Boyd.

never went into effect, and it came too late to be the source (besides as we will see there was an earlier precedent).

The Concessions and Agreements of 1665, prepared by Berkeley and Carteret, mentioned the creation of “parishes Divisions Tribes or other Distinctions.” Later on it mentioned “Parishes Manors or whatsoever other Divisions...” and “Forts Fortresses Castles Citties, Corporations Burroughs, Towns, Villages, and other places of Strength and defence...”²⁰ It did not mention counties. *The Declaration of Intent* of 1672 also neglected to mention counties.²¹

The *Fundamental Constitution for the Province of East Jersey of 1683* listed counties, but only as a unit to be used for elections. It stated: “But forasmuch as there are not at present so many Towns built as there may be hereafter, nor the Province divided into such Counties as it may be hereafter divided into....”²²

The Constitution provided for an assembly to consist of no less than 144 members, and an upper house of 36. It directed that at first the lower house have twenty-four representatives elected from the eight existing towns, and 48 elected for the county (apparently assuming there was only one), plus the 24 proprietors (or their proxies), which would by their own calculations would make 96. For laws to pass there needed to be a 2/3 vote to approve, that included the consent of twelve proprietors or their proxies. This called for a complex government populated with more members than the colony could afford. For comparison, remember that today the New Jersey assembly (including what then would have been both East and West Jersey) has 80 members, and the Senate 40. Under the Fundamental Constitutions also all laws would have had to be approved by the proprietors in Britain, a difficult proposition as they were scattered across England, Ireland, and Scotland.²³

Important also is that the document only mentioned counties as a unit for elections. It was completed at the end of 1683, and did not arrive in the colony until 1684. It needed the approval of the East Jersey assembly to go into effect and that body rejected it in 1686.

It appears (meaning “probably”) that the proprietors did not push to have counties established; rather the initiative came from the assembly.²⁴ Power to do this had been provided for in the *Concessions and Agreements*.

²⁰ Boyd, 51-66.

²¹ Boyd, 67-70.

²² Boyd, 109-125.

²³ In 1685 the East Jersey Board of Proprietors was created to consist of resident proprietors who met in the colony. It was responsible to keeping track of land grants, and approving laws. The proprietors who remained in Britain did though continue to be involved in the affairs of the colony, and at times to disagree with those in residence.

²⁴ Richard S. Field, *The Provincial Courts of New Jersey* (New York: Bartlett & Welford for the New Jersey Historical Society, 1849), 12-13, suggested that the nature of the courts established in 1683, specifically the Court of Common Right, the supreme court for the colony, was influenced by the new Scottish proprietors. Preston W. Edsall, ed., *Journal of the Court of Common Right and Chancery of East New Jersey, 1683-1702* (Princeton: Princeton University Press, 1937) 3-12, strongly disagreed. Edsall

V. Monmouth Patent and Declaration of Independence.

Before looking at what the assembly did in 1683, note should be taken of the Monmouth settlers and their view of the *Concessions and Agreements* and *Declaration of Intent*.

The patent from Richard Nicolls stated they had: “Liberty to elect by the Vote of the Major Part of the Inhabitants 5 or 7 other Persons of the ablest and discreetest ...to have full Power and Authority to make such peculiar Laws and Constitutions amongst the Inhabitants for the better and more orderly governing of them...” Also to try all causes up to L10, but all criminal cases had to go to New York.²⁵ This was undoubtedly meant, like other New York grants, to give limited authority, but the settlers took a very liberal view of it. Under its terms the Navesink towns called an assembly of representatives at Portland Point in December 1667 that apparently continued to meet until 1670.²⁶

The first Provincial Assembly, called by Philip Carteret met the next year, in 1668. Several delegates from Navesink attended, but later their participation was repudiated by the towns. Middletown and Shrewsbury then refused pay the taxes that had been set by the Provincial Assembly, L5 per town, based on the argument that consent had not been given. The settlers said they were afraid that by attending, and taking a required oath of loyalty to the proprietary government of Berkeley and Carteret, they would place their Nicolls titles in jeopardy. When it next met, the legislature authorized two members to go to the towns and seize the property of the dissidents to cover the taxes. The towns then pledged to resist. It is difficult to follow all the details of the conflict because the minutes of subsequent sessions of the Provincial Assembly do not exist (although there apparently were meetings).²⁷

The longest document in this exchange, dated March 17, 1669, has been labeled the “Monmouth Declaration of Independence.”²⁸ The settlers said they would submit to the King, but they added “As to the Lords Proprietors’ interest, it being a new, unheard of thing to us, and soe obscure to us that at present we are ignorant what it is...” They continued “Lords Proprietors’ name, being such a name as wee simple creatures never heard of before...” And then “Neither the Lords proprietors nor the Generall Assembly can in the leaste breake our liberties and privileges...”

It continued on and on, one gets the sense they were so mad they were just sputtering. They rejected the *Concessions & Agreements* because accepting it meant recognizing the proprietors’ titles. They insisted title from the Indians and the Duke was sufficient, all they needed, but they also said they would swear loyalty to the proprietors and sign oaths of allegiance **if** given guarantees of their “owne interest.” In other words they wanted

maintained that all aspects of the system devised in 1683 came from the colonial legislators. That is also the argument here. See also Pomfret, ENJ, 170-171.

²⁵ NJA v.1, 43-46; Ellis, 61-63.

²⁶ Ellis, 71-79, 85-96; Pomfret, ENJ, 46.

²⁷ Ellis, 85-101; Pomfret, ENJ, 56-60, 64.

²⁸ Ellis, 90-92.

guarantees of their land titles, but they also did not want to pay the quit rents that would come due in 1670.

As noted before a disordered time followed. James Carteret, and the Dutch, came and went. Then in the *Declaration of Intent* and again after 1674 Sir George Carteret reiterated that he would not recognize the Nicolls grants. The *Declaration of Intent* undermined safeguards offered by the *Concessions*, and was even more strongly objected to by the colonists. Then came the Twenty four proprietors in 1683; they also renounced the Nicolls grants. Both times the king sent statements that the inhabitants of New Jersey should obey the proprietors.

VI. What the Assembly Did and Why.

In the midst of all this conflict the assembly took action, actually in the end twice.

The *Concessions and Agreements* gave the assembly the power to “constitute all Courts together with the limits powers and Jurisdictions of the same...”²⁹ But in practice apparently Governor Carteret constituted the courts that operated from 1666-1673. When he returned from England in 1674, after the Rebellion of 1672 and the Dutch interlude, he brought with him the *Declaration of Intent* written by Berkeley and Carteret as part of the effort to reassert their authority. It first stated that no one could be “counted a Freeholder...nor have a Vote...nor be elected...” without taking out a land title from the proprietors.³⁰ In other words the Nicolls grants would not be recognized, and those who persisted would not be seated in the government. But it also stated that “it is in the Power of the Governor and his Council to constitute and appoint Courts...without the General Assembly...” excepted where the “Courts of Sessions and Assizes to be constituted and established by the Governor Council and Representatives together...”³¹

It was after this that the members of the assembly brought up the creation of counties, and they actually, as noted, did this twice (although the first time they were not given names and the boundaries were extremely vague). [Figure 1] Both times it was at a point when assemblymen were or had been in conflict with Governor Philip Carteret. In 1675 the East Jersey legislature placed the towns together into four groups for the purpose of holding courts – the groups were: first Bergen; second Elizabeth-town and Newark; third Woodbridge and Piscataqua; and fourth the Navesink towns of Middletown and Shrewsbury. The laws on which this was based had to be renewed annually when the assembly met, but because of the disputes with Governor Philip Carteret, and his conflict with Edmund Andros, no assembly was called for several years after it had been passed. The legal basis for the 1675 courts expired. However, Carteret, using the provision of the *Declaration of Intent*, again called into session prerogative courts. His right to do so, as well as the decisions made by his advisers and those courts, was questioned. Several men who opposed his actions were arrested and one jailed for six months. There were

²⁹ Boyd, 56.

³⁰ Boyd, 68.

³¹ Boyd, 68-69; emphasis added.

accusations of a “ring” operating with the governor to further land claims that benefitted themselves.³²

Then the Twenty Four proprietors took title, and Thomas Rudyard arrived as deputy governor. He found the settlers incensed on the court issue, and the colony, not the first nor the last time, in turmoil.³³ He initially set out to smooth matters over, and tried to get along with the assemblymen. There were three sessions of the assembly in his short ten month tenure, which in the end accomplished much. Despite the success in passing laws the situation deteriorated – the governor and council got into a bitter dispute with the assemblymen, and he finally dismissed them completely. But before that happened, on March 6, 1683 in that first session the council received:

“A message from the house of Deputyes desireing to morrow moorneing a private Conference betwene some of the Councill and some of the members of the Deputyes to Confere about settling the Countyes and such like Concerne.”³⁴

Apparently a quarter of a page of the following minutes of the Provincial Council are missing so there is no record of the conference, but the next day the assembly sent a bill “downe from the Deputyes for deviding the P^rvince into Countyes.”³⁵ [Figure 2]

They then moved on to providing for justices of the peace and sheriffs for each county. Agreement on the proposal seems to have been reached amicably. The legislature went on to pass additional laws that added to the legal code for the colony first adopted in 1668. The courts were to be based in the counties, with a supreme court for the colony for appeals. The intended result would be settled courts, and no prerogative courts.

In the sessions that followed bickering worsened, at issue whether the assembly could initiate legislation, and what changes it could make in what was sent by the governor and council. Governor and council were infuriated by what they saw as the impudence of the deputies, while the members of the lower house, primarily farmers, kept insisting they needed to go home and tend to their crops. Despite the accomplishments the meetings included many sour notes.³⁶

But the first counties, with names and definite boundaries, had been established, and their primary function, shown in the wording of the law, was to hold court sessions.³⁷ It was called “An Act to divide the Province into four counties.” It began “Having taken into Consideration the necessity of dividing the province into respective Counties, for the

³² On Philip Carteret’s conflict with the assembly in 1681 see: NJA, v.1 354-365; Pomfret, ENJ, 153-159; McCormick, “Revolution of 1681,” 111-124.

³³ Pomfret, ENJ, 154-155.

³⁴ NJA v.13, 17. William Penn was present, and sitting as a member of the Council of March 6th, but he is not listed in the following session minutes. The prominent Quaker, a proprietor of East Jersey as well as Pennsylvania and West Jersey, may have contributed to the initial efforts at cooperation in this assembly meeting.

³⁵ NJA v.13, 18.

³⁶ Pomfret, ENJ, 159 -165.

³⁷ Field, 1-14; Pomfret, ENJ, 169-172.

better governing and settling Courts in the same, Be It Enacted by this General Assembly, and the authority thereof...”³⁸

That the court system was front and center for the legislature is also shown in the first law to come out of that session, noted as “Chap 1” in the records, “A Bill to make void the Proceedings of some late Courts.” It stated that: “Whereas by the General Concessions of the Province [of 1664] ...no Courts are to be constituted or erected in this Province, but by Act of General Assembly, and whereas several Courts have been constituted and erected (without any Act of General Assembly) ...” since November 2, 1681 “... to the Manifest Infringement of the Liberties of the Inhabitants of the Province, BE IT THEREFORE ENACTED...all Proceedings, Judgments, Sentences, and Executions” made by those courts are “...declared, illegal, null and void...”³⁹ The assembly also went after those who had helped Carteret. The men who had been thrown in jail sued for false imprisonment.⁴⁰

Under the laws of 1683 towns were to hold monthly courts for small causes; county courts met quarterly to consider civil and criminal cases. No freeman could be imprisoned, exiled, or condemned but by a jury of peers, and all trials were to have a jury of twelve men from the neighborhood.⁴¹ The Court of Common Right was the supreme court for appeals in the colony. This was different from the prerogative courts under Carteret (used 1666-1673, and 1681-1682).⁴² Those apparently had been created, controlled, and manned by the governor and his council, called when and where they wished, and held without juries.

VII. So what? Did it matter?

The final “so what” question – did it matter? Absolutely, although it did not end the controversy over courts in East Jersey.

If the Monmouth settlers wanted a measure of independence and control they now could find it in the county and its courts. In 1685 the Navesink towns settled with Deputy Governor Gawen Lawrie, who replaced Rudyard. He came with clear instructions from the Twenty Four Proprietors stating “And whereas some have pretended a right to Government as well as the Soil, that cannot be...”⁴³ Although they recognized the proprietor’s titles in returned for quit rents that had been negotiated at a lower rate, it is doubtful they paid all of them.

³⁸ L&S, 229. Emphasis added.

³⁹ L&S, 227-228.

⁴⁰ Pomfret, ENJ, 155-159.

⁴¹ The West Jersey Concessions of 1676 made specific provisions for ensuring liberty that included trial by a jury of ones peers. Boyd, 71-100.

⁴² Pomfret, ENJ, 167-170; Edsall, 3-5; McCormick, “Revolution 1681,” 120.

⁴³ NJA v.1, 429-430.

Elsewhere the disputes persisted. Newark settlers insisted until 1769 that Indian titles were sufficient; Elizabethtown continued to fight the proprietors until the American Revolution and beyond.⁴⁴

Creating counties and county courts meant some prospect of protection for land titles as it could be assumed that this is where most cases of disputed titles would end up. In fact in the long run colonists often controlled juries, and got favorable decisions against the proprietors. This is certainly part of what happened in the 1690s.⁴⁵ But the proprietors (through the governor and council) could appoint judges, and after 1702 influence their selection.

In the eighteenth century there were complaints in New Jersey that the judges were either proprietors themselves or the tools of the proprietors.⁴⁶ In the second third of the century the disputes over land titles escalated. They resulted in riots and in the Elizabethtown Bill in Chancery – the largest court case in colonial New Jersey. Just before the Revolution it also led to further disturbances particularly around Newark, and some in Monmouth, over lawyers and their fees (often for land title cases). There were charges that the proprietors tried to put all the lawyers in the tri-state area on retainers, which was true (although they did not entirely succeed).⁴⁷ Most of this took place outside of Monmouth, but the issues went back to the seventeenth century and the Nicolls grants. With the colonists controlling juries and the proprietors often controlling the judges, the result was checkmate or stalemate. The Elizabethtown case was never settled in the courts, it dragged into the nineteenth century when possession apparently gave final title.

It should be clear from the discussion that there was a reason why John Pomfret, who wrote the most detailed history of colonial East Jersey, called it the “Rebellious Province.”⁴⁸ He ended his history in 1702, but the conflicts continued. Even New Jersey’s becoming a royal colony at that time did not resolve the problems, nor did the American Revolution, as the proprietors continued to own the land – in fact the East Jersey Board

⁴⁴ For later disputes see especially: Thomas L. Purvis, *Proprietors, Patronage, and Paper Money* (New Brunswick: Rutgers University Press, 1986); Brendan McConville, *Those Daring Disturbers of the Peace: The Struggle for Property and Power in Early New Jersey* (Ithaca, N.Y.: Cornell University Press, 1999); Eugene Sheridan, *Lewis Morris, 1671-1746: A Study in Early American Politics* (Syracuse, N.Y.: Syracuse University Press, 1981); Daniel J. Weeks, *Not for Filthy Lucre’s Sake: Richard Saltar and the Anti-proprietary Movement in East New Jersey, 1665-1717* (Bethlehem, 2001).

⁴⁵ The most famous case is Fullerton vs. Jones (1695) where the jury decided against the proprietors’ claims, but was reversed by the judges. The case then went to England and both sides later claimed to have won. See: Purvis, 11-12; Sheridan, 23; Tanner, 76-77; Wacker, 347. For the larger story of disorder in the 1690s see Pomfret, ENJ, 276-364; Sheridan, 19-34; Weeks, 76-115; Edsall 98-101.

⁴⁶ In 1702 the proprietors of both East and West Jersey surrendered their claims to the government to the Crown. New Jersey became a royal colony with its governor and council appointed by the King. Both sets of proprietors though retained their titles to New Jersey’s land, and the most prominent of them often sat on the Council. Some also served in the assembly, and as judges.

⁴⁷ George Miller, ed., *Minutes of the Board of Proprietors of the Eastern Division of New Jersey* (Perth Amboy: 1949-1960) v.2, 3; Purvis 93-94; Wacker, 355.

⁴⁸ Disputed by Claribel Young, who argues that East Jersey was not unusually rebellious, and when it was there were reasons. She does though end her study in 1682. Both the conflict in 1672 and 1681 have been described as rebellions.

of Proprietors (the descendents of the Twenty Four Proprietors) continued to exist until 1998.⁴⁹ This was an interesting legacy from a fractious era.

In concluding this needs to be put in an even broader perspective. The seventeenth century was the time when the concepts of religious toleration and political rights were being worked out. Challenges to the power of the monarchy, requirements of consent for taxes, legality of prerogative courts, were all issues in play in England and its colonies, in the midst of Civil War and Revolution. The English Bill of Rights came out of the Glorious Revolution of 1688. The struggle over assemblies, courts, and land titles, the fight between proprietors and settlers in New Jersey that led to the establishment of Monmouth County, were all part of these historical developments.

⁴⁹ John T. Cunningham, *East of Jersey: A History of the General Board of Proprietors of the Eastern Division of New Jersey* (Newark: New Jersey Historical Society, 1992); Maxine N. Lurie, "New Jersey: The Long Lived Proprietary," in L.H. Roper and B. Van Ruymbeke, eds., *Constructing Early Modern Empires: Proprietary Adventures in the Atlantic World, 1500-1750* (Leiden: Brill, 2007), 327-355. The West Jersey proprietors still exist.